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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,686	01/28/2000	Carl Pinsky	9029-6MIS:jb	2539

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CANADA

EXAMINER

STRECKER, GERARD R

ART UNIT	PAPER NUMBER
	2862

DATE MAILED: 05/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/493,686</b>	Applicant(s) <b>Pinsky</b>
Examiner <b>Gerard Strecker</b>	Art Unit <b>2862</b>



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Applicant's communication filed 2/27/03

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-31 is/are pending in the application.

4a) Of the above, claim(s) 1-11 and 16-31 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 12-15 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

6)  Other: \_\_\_\_\_

Art Unit: 2862

Claims 1-11 and 16-31 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 5.

Claims 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Fletcher et al (3,906,231, newly cited).

Fletcher et al disclose a Josephson junction device (Figs. 1-3) for detecting changes in infrared microwave radiation (spontaneous intraatomic electron and nuclear quantum states) of a substance as an identification of the substance. The device may be used to identify chemical compounds as indicated at col. 4, lines 45, 46 and col. 5, lines 1-3.

Claims 12-15 are again rejected under 35 U.S.C. 102() as being anticipated by Hill, Jr. et al.

Hill et al discloses a method of detecting chemical substances utilizing stimulated emission. At column 1, lines 59-65, column 3, lines 55-64, column 5, lines 22-25, Hill et al recognizes that spontaneous emission can be used to detect such substances.

Applicant argues that the emitted radiation in Hill et al derives from chemical compounds stimulated by heat and interaction with other physical and chemical agents in the exhaust medium. Irrespective of the derivation of the radiation, such radiation is defined in Hill et al as spontaneous emission and thus meets the recitation in the claims of detecting fluctuations in "spontaneous intraatomic electron and nuclear quantum states".

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Claims 12-15 are again rejected under 35 U.S.C. 102(b) as being anticipated by Schoenig, Jr. et al (4,620,100) or Schoenig, Jr. et al (4,620,099).

Schoenig, Jr. et al (100') and Schoenig, Jr. et al (099') both disclose systems for detecting a chemical substance by spontaneous emission. See Abstract of Schoenig et al (100') and claim 8 of Schoenig et al (099'). Use of either system would anticipate the recited method.

Applicant argues that in the Schoenig references the material is subject to neutron activation. However, as noted in Schoenig et al (100'), measurements are made without neutron activation (col. 1, lines 33-58 and col. 6, lines 13-19) and as noted in Schoenig et al (099'), spontaneous measurements are made before introduction of a neutron source (claim 3, step 8). As such, the claims fail to define over the Schoenig et al references.

Seling is made of record to show a microwave radiometer.

Cole et al is made of record for its teaching of identifying a material either by spontaneous or induced fission.

Hamid is made of record to show a method of grading materials by measuring microwave radiation.

Any inquiry concerning this communication should be directed to G. R. Strecker at telephone number 305-4937.

Strecker/ek

05/21/03

*Gerard R. Strecker*  
GERARD R. STRECKER  
PRIMARY EXAMINER